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नई दिल्ली, शनिवार, अक्टूबर 12, 1996/आस्विन 20, 1918

No. 27] NEW DELHI, SATURDAY, OCTOBER 12, 1996/ASVINA 20, 1918

इस भाग में भिन्न पृष्ठ में ज्ञाती हैं जिसमें कि यह अन्य मंहत्वपूर्ण के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य और प्रशासनों की ओङ्कार) द्वारा जारी किए गये आदेश और अधिकाराएँ
Orders and Notifications issued by Central Authorities (other than the Administration of Union
Territories)

भारत निवाचन आयोग

नई दिल्ली, 26 सितम्बर, 1996

आ. अ. 104.—शोक प्रतिनिधित्व प्रधिनियम, 1951 (1951
का 43) की धारा 106 के अनुसरण में, निवाचन आयोग एवं दं-
द्वारा 1991 की निवाचन अर्जी सं. 3 (आर.) में दिया गया पटना
उच्च न्यायालय (पटना, रांची बैच्च, रांची) का तारीख 7 जुलाई,
1995 का निर्णय प्रकाशित करता है।

(निर्णय अधिसूचना के अन्तर्गत भाग में लिपा है।)

[स. 82/बिहार/(3/91)/96(आर.)]

आदेश से
मी. आर. ब्रह्मम, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 26th September, 1996

O.N. 104.—In pursuance of section 106 of the
Representation of the People Act, 1951 (43 of
1951) the Election Commission hereby publishes

the order dated the 7th July, 1995 of the High
Court of Judicature at Patna, Ranchi Bench,
Ranchi in Election Petition No. 2 of 1991 (R).

ELECTION PETITION NO. 3 OF 1991(R).

In the matter of an application under sections
80-A and 81 of the Representation of
People Act, 1951.

Smt. Sumati Oraon ... Petitioner

Versus

Shri Lalit Oraon ... Respondent

For the Petitioner : M/s. P. K. Verma and
A. Allam.For the Respondent : M/s. Barnwal S. Lal, &
Ram Kishore Prasad.

PRESENT :

THE HON'BLE MR. JUSTICE PRASUN
KUMAR DEB

Prasun Kumar Deb, J. :—This election petition
under sections 80-A and 81 of the Representation of
People Act, 1951 (hereinafter to be referred to as

'the Act') has been filed by the abovenamed petitioner against the respondent who has been declared elected as Member of Lok Sabha from 53 Lohardaga (ST) Parliamentary Constituency in the Chotanagpur Division, Bihar, on 17-6-1991.

2. The notification for election of the said Parliamentary Constituency was published in the month of March, 1991 and the poll date was fixed on 20-5-1991. The repolling of nine booths was made on 12-6-1991 and after counting of votes on 16-6-1991, the result of the election was published on 17-6-1991 declaring the respondent as elected candidate from the said Constituency.

3. The petitioner was a sitting Member of the Parliament and she was earlier elected as Member of the Parliament from the said Constituency after the death of her husband Late Kartik Oraon in the year 1982, 1984 and 1989 as a Congress (I) candidate. The petitioner was allotted the official symbol of Congress (I), namely, "HAND" and the respondent was given the official symbol of "KAMAL PHOOL" of Bhartiya Janta Party (hereinafter referred to as 'B.J.P.'). The Parliamentary Constituency of Lohardaga (ST) consisted of six Assembly Constituencies, namely, Mandar, Sisai, Bishunpur, Lohardaga, Manika and Gumla. The respondent was sometime earlier the member of the Legislative Assembly constituencies as mentioned above. The election of the respondent has been challenged in this petition on the ground of corrupt practice, as according to the petitioner, being an official candidate of B.J.P., the respondent canvassed the people on religion basis, used pamphlets and posters with religious calls and created sentiments amongst the Hindu voters having hatred towards the other communities.

4. The main contention is that the petitioner highlighted the name and symbol of God "Shree Ram" to incite the religious sentiment of the Hindus and in doing so, he further promised to construct the temple of 'Shree Ram' at Ayodhya. During the electioneering and campaigning, it is stated that the petitioner used various slogans such as :—

"Saugandh Ram Ki Khata Hai. Jaha Ram Ne Janam Lia Hai, Mandir Wahi Banagen. Jab-Jab Hindu Jaga Hai, Jolha Desh Se Bhaga Hai. BHAJPA Ka Pura Nam, Bhag Jolha Pakistan. Ram Krishna Hare Hare, Kamal Phul Ghare-Ghare. Jo Hindu Hit Ka Kaj Karega, Wahi Desh Per Raj Karega."

It has further been asserted that the respondent displayed Bhagwadhwaj, the flag of Hindu God Shree Ram freely and throughout the constituency by himself and through his agents in their vehicles and the meetings during the poll campaign. It has also been alleged that B.J.P. made an agreement with the National leaders and understanding with Vishwa Hindu Parishad, Rashtra Swamsewak Sangh, Bajrang Dal and on the basis of that alignment made at the national level, the respondent also used literatures of those parties to make the poll campaign in exploiting Hindu religion and their workers have also worked for and on behalf of the

respondent. In the election petition, specifically the name of Shri Ashok Singh, Secretary of Vishwa Hindu Parishad, Atal Behari Vajpayee, national leader of B.J.P., Tara Kant Jha, State level leader of B.J.P. have been named specifically to have delivered poll lectures for and on behalf of the respondent and in their lectures and organised meetings, Hindu religion was exploited and call for unity of the Hindus were made with the prayer that Hindus should reign over India. It has also been alleged that the respondent had used Video Cassette showing what had happened in Ayodhya in the year 1990 and on the basis of those incidents with the very intention of inciting Hindu sentiments amongst the Hindu voters, poll campaign was made. It has further been complained that inflammatory speeches of Sushri Sadhvi Ritambhra of Vishwa Hindu Parishad were payed here and there over the whole constituency during the election campaign by playing audio cassettes. The petitioner has further stated that insinuations were made against the Congress (I) candidate by stating that Congress (I) was creating vote bank amongst the Muslims. It has been stated that the Hindu religion was exploited to its fullest extent at the direct instigation of the respondent and there were wall writings with inflammatory slogans in the name of Hindu religion to the annoyance of the Hindu voters by the respondents and his agents on the direct connivance of the respondent. On the grounds mentioned above, the petitioner has prayed for setting aside the election of the respondent on corrupt practices as contemplated under section 123(2) (3 and 3-A) of the Act.

4. In the written statement, the respondent has totally denied all the allegations and insinuations brought against the respondent and over and above it has taken the plea of maintainability of the election petition on technicality under sections 80, 81, 82 and 83 of the Act. Specific denials have been made pairwise of the allegations brought against the respondent by the petitioner. It is the case of the respondent that Being a B.J.P. candidate, he fought the election on the issue of social justice, eradication of poverty and giving peace to the country. They have used the word 'Ram' not as a symbol of God Shree Ram, but as a symbol of peace which is recognised all over India amongst all communities. The respondent has further challenged that Vishwa Hindu Parishad, Rashtra Swamsewak Sangh and Bajrang Dal had never participated in the election campaign of the respondent and those parties not being the political parties, question of political alignment or adjustment does not arise. It is further categorically denied the organisation of any meeting by the respondent or his party (B.J.P.) of organising the meeting of Shri Ashok Singh, the leader of Vishwa Hindu Parishad been specifically stated that the leader came and organised meeting where he delivered lectures in support of B.J.P. but when his meetings were concealed, the election programme at Lohardaga constituency was not being notified and as such his lectures cannot be counted as a corrupt practices used by the respondent in his election campaign.

5. On the basis of the pleadings of the parties, the following issues were framed in the case vide order dated 22-1-1993 :—

- (I) Whether posters, pamphlets, symbols, speeches and slogans as mentioned in the election petition were published and displayed with appeals for furtherance of the prospects of the election of the respondent ?
- (II) Whether the posters, pamphlets, symbols, speeches and slogans so mentioned are appeals on the ground of religion, religious symbols and also is a promotion or attempt to promote feelings of enmity and hatred on grounds of religion ?
- (III) Whether appeals on the basis of religion or religious symbols was made for the furtherance of the election of the respondent, candidate of Bhartiya Janta Party, by advertisement and publication in the local Newspaper widely circulated in the Constituency as mentioned in the election petition ?
- (IV) Whether the said posters, pamphlets, symbols, speeches, slogans, articles etc., were published, distributed and circulated in the constituency ?
- (V) Whether the respondent, his agent, other persons including his party men with his consent were directly responsible for the publication of the said posters, pamphlets, speeches, slogans, advertisement etc., and if not, whether the respondent can be deemed to have consented to their publication and distribution because he was an official candidate of the Bhartiya Janta party ?
- (VI) Whether the election of the respondent is vitiated because of the commission of corrupt practices as envisaged under section 123(2), (3) and (3-A) of the Representation of Peoples Act and is fit to be set aside ?
- (VII) Whether the election petition is liable to be dismissed for non-compliance of Sections 81 and 117 of the Representation of Peoples Act ?"

6. For and on behalf of the petitioner, as many as 19 witnesses including the petitioner have been examined in support of her case while the respondent examined in total 22 witnesses including the respondent as D.W. 22. Before going into discussing the election petition issue-wise it is felt necessary to frame the guidelines on the basis of various decisions of the different High Courts and the Apex Court in support of challenge of the election on corrupt practices on religious exploitation.

7. The purity of election is the essence of democracy and providing for invalidation of an election on the ground of commission of any corrupt practice is the object of enacting these provisions, it cannot be accepted that the election scene having degenerated over the years, appreciation of evidence for deter-

mining the commission of a corrupt practice must be made liberally because of the lower value in the arena of election. For democracy to survive, the Rule of Law must prevail and it is necessary that the best available men should be chosen as Peoples representatives for proper governance of the country. This can best be achieved through man of high moral and ethical value who win the election on a positive vote obtained on their own merit not by negative note of process of elimination based on comparative demerits of the candidates. From the observations of the Apex Court in its various judgments, it could be formulated that the charge of corrupt practice if it is proved not only the returned candidate's election can be set aside but the returned candidate shall be debarred from contesting the election for the next six years. Therefore, it is the bounden duty of the Court to be very cautious in coming to the conclusion of corrupt practice. The allegation of corrupt practice must be proved beyond all reasonable doubt and if there is some doubt then the Court should always be hesitant in setting aside the election on the ground of corrupt practice. Though the basic thing of deciding the election petition is civil in form but in substance, it is a criminal trial. There is no question of making out a prima facie case and then casting burden on the opposite party i.e. the returned candidate to rebut the same. It must be borne in mind that the choice of voters freely expressed should not be lightly interfered with. The charge of corrupt practice must be proved by clear and cogent evidence as a charge of criminal offence. Such charge should not be leniently looked into and the election process should not be made upset by declaring the election null and void on easy approach towards charge/allegation of corrupt practice as it would have tremendous effect in the society. When an election is declared null and void and as there would be re-election, besides the expenses, the full process will be made topsy turvy.

8. However, in the present case charge of corrupt practice is that the respondent had made religious call to Hindu voters for their united effort to form Hindu Government in the Centre. Admittedly, none of the candidates i.e. the petitioner or the respondent are Hindus. They are Adivasis having Adivasi religion called "Sarna" religion. It is also found from the evidence of the parties that there are also Hindu Adivasis but the respondent being not a Hindu had been chosen by the B.J.P. as a candidate. This respondent was elected previously also in the Assembly constituency through B. J. P. ticket and that was done before Ayodhya issue which is the main crux of attack on Hinduism against B. J. P. and the respondent having his election aim through class of Hindu religion.

9. From the evidence of the petitioner herself, it is clear that although the petitioner was elected thrice to the Parliament but her difference of votes were degrading, reducing in the subsequent elections and according to the respondent, the petitioner lost the present election as the people/voters lost faith in her as she did not work socially or economically for the upliftment of the society in general of the constituency. The party on whose ticket a candidate has won might have its faith and alignment towards

Hinduism and the party might have some election adjustments with religiously based organisations or parties but for setting aside of election of the respondent being a candidate of B.J.P. on the ground of corrupt practice on religious exploitation should be proved independently with cogent and reliable evidence to the effect that the respondent himself or at his indulgence or connivance, religious calls have been made for the purpose of winning the election. With these broad principles and guidelines, the issues mentioned above in this election petition should be decided.

Decisions & reasons thereof

10. Issue No. (VII) :—This issue is taken up first as it relates to maintainability of the whole election petition. It is stated from the Bar from the side of the petitioner that this issue ought to have been decided as a preliminary issue before going into the trial of the case as if this issue goes against the petitioner then full trial of the case is not necessary. There was no prayer from the side of the respondent to take this issue as a preliminary issue but it has been stated at the Bar that although such submissions were made from the side of the respondent it was considered by the Hon'ble Single Judge of this Court at whose file the election petition was pending from beginning that this issue could also be decided after conclusion of the trial.

11. There was confusion previously whether the point of maintainability on the ground of non-compliance of Sections 81 and 117 of the Act could be considered as a preliminary issue and the decision of that issue can make the election petition dismissed without going into a full fledged trial or not because of the word used "trial" in section 98 of the Act but this confusion has been set at rest by the Apex Court in *Om Prabha Jain Vs. Gan Chand and another* (AIR 1959 Supreme Court 837) to the effect that dismissal of election petition on negative finding on the maintainability of the election petition on non-compliance of Section 117 of the Act is a dismissal under Section 98 of the Act even if there was no full fledged trial. So this point can be decided as a preliminary issue and on the decision of this issue alone may cause the decision on the whole election petition if the finding is in the negative form.

12. Section 81 of the Act requires that election petition should be presented on one or more ground specified under section 100/101 by any candidate of such election or by any elector within 45 days of the declaration of the result of the election and that such election petition should be accompanied by as many as copy thereof as there are respondents mentioned in the petition. The present petition has been filed on 1-8-1991 and the election of the respondent as a returned candidate was declared elected as Member of Lok Sabha from 53 Lok Sabha (ST) Parliamentary constituency on 17-6-1991 and hence the petition is within the prescribed limit. As per the stamp report, it is found that the election petition while submitted by the petitioner was accompanied by a copy of election petition duly signed and attested by the petitioner herself. It is contention of the respondent that the copy received by him was not the exact copy of the election petition,

and it was not properly signed and verified. Although such feeble plea was there in the written statement filed by the respondent but neither that copy was submitted before this Court by the respondent for verification of the same itself. From the order-sheet of the case, it could be found that the copy sent to the respondent along with summons were returned unserved as he was out of station and then there was paper publication and on the basis of the same, the respondent appeared and prayed for having a copy of the election petition for enabling him to file written statement. Accordingly, photo stat copy of the election petition was supplied to him. Another copy of the election petition is with the records and on scrutiny of the same, it is found that the same conforms with the provisions of sub-section (2) of Section 81 of the Act and, therefore, on this score also, the election petition is maintainable.

13. As regards the deposit of the cost of the election petition as required under section 117 of the Act, challan was filed along with the election petition itself and the same is on the record and that has also been complied with properly as required under that section.

14. The main contention of the respondent is that there is non-compliance of section 83 of the Act and there is no full particulars of corrupt practices as alleged by the petitioner have been included in the election petition and the same remained vague and as such the election petition is required to be dismissed at the initial stage itself without going into trial.

15. Mr. Verma, learned counsel appearing for and on behalf of the petitioner contends that such plea is not maintainable at this stage when the full-fledged trial has been completed in the case and the respondent filed the written statement on the basis of the allegations made in the petition itself, but if there is really a vagueness in respect of adoption of corrupt practice then the election petition can be dismissed forthwith. Section 83(1)(b) requires "schedule set forth full particulars of any corrupt practice of the petitioner that the petitioner alleges including as full statement as possible. The names of the parties alleged to have committed such practice and date and place of commission of each such practice." So the law requires that when the corrupt practices are alleged against the returned candidates then full statement of such corrupt practice should be given in the election petition itself but a leniency has been given by using the words "as far as possible". In the present election petition, paragraphs 12 to 28 provides such detailed particulars of corrupt practice and then Schedule A has been included by showing the names of the persons who were involved in such corrupt practice for and on behalf of the respondent. Then an affidavit has been filed as required under sub-section (1-c) and sub-section (2) of Section 82 of the Act. The affidavit has been sworn in Form No. 25 specified under the Rules.

16. Corrupt practice alleged by the petitioner is of very many types such as using of posters, pamphlets, hand-bills and wall writings by the respondent,

his agents and his party workers. One such poster has also been marked exhibit in the case. The wordings of the posters and the places, those posters were displayed have been specifically mentioned in the election petition itself. There may be some omission regarding the name of exact person as to who had distributed the pamphlets or who had carried posters and/or hung it or who had written the wall writings depicting religious slogans as alleged by the petitioner but that does not take the requirement as contained in Section 82 of the Act. If there is any omission in respect of a particular allegation then that allegation might not be taken into consideration for the purpose of declaring the election void but for that reason alone, the whole election petition cannot be dismissed. This is the clear view of the Apex Court in Subhash Desai Vs. Sharad J. Rao and others (AIR 1994 Supreme Court 2277). There are also other types of allegations of corrupt practice such as convening of meetings at the instance of the respondent by some communal organisation such as Vishwa Hindu Parishad and inflammatory speeches being given in that meeting particularly referring the time, place and name of the orators/lecturers in that meetings have been mentioned in the petition. Another type of allegation is with regard to display of video cassette of Ayodhya happenings of 1990 and playing of audio cassette of the speech of Uma Bharti. Those have been specifically pleaded in the petition but regarding the person who had played it had not been specifically mentioned in the election petition.

17. Mr. Barnwal S. Lal, learned counsel appearing for and on behalf of the respondent has strenuously argued by referring to several decisions of the Apex Court that when full particulars are not given of alleged corrupt practice, then the petition should be dismissed at the threshold. He referred to a decision of the Supreme Court in Azhar Hussain Vs. Rajiv Gandhi (AIR 1986 Supreme Court 1253), but the facts of that case and the nature of the allegations made do not wholly cover the present case. As already mentioned above, there is some lacuna in the petition itself regarding the names of the persons as to who distributed pamphlets or hand bills or at what place are not there in the petition but this does not take away the whole election petition rather that particular allegation of corrupt practice may not be taken into consideration, yet how far that had affected the impugned election would be considered in deciding the later issues while coming to discuss the facts in detail. Similarly, the decision of K. C. Madhava Kurup Vs. K. Muraleedharan (AIR 1991 Kerala 20) also does not cover this case where in that case there was total vagueness regarding the allegation of corrupt practice. As per that case, voters were taken to the polling stations by hired conveyance by the returned candidate but no particulars have been given regarding the vehicles and the persons who had carried and from where and, as such, it was held that the whole election petition was vague. Mr. Barnwal S. Lal lastly made a feeble attempt by referring the case of Purushottam Vs. Returning Officer, Amravati (AIR 1992 Bombay 227) that the affidavit sworn in by the petitioner was not according to law as it was not done before the Notary Public but on scrutiny of the papers it

is found that it is into to in Form No. 25 as required under the Rules and the same was sworn in before Advocate Oath Commissioner which is equivalent to Notary Public, hence this point has also got no force.

18. In election petition alleging corrupt practice of various types, if one of such allegation is proved then the election is liable to be set aside. In pleading those corrupt practices, there may be some omissions in respect of a particular item but that cannot vitiate the election petition as a whole. Only that item may not be taken into consideration for the purpose of adjudication of the election petition. After scrutiny of the election petition in minut particulars, I find and hold that for some items of allegations, there is some vagueness in the election petition itself but for most of the allegations, there are proper descriptions with full contents. The purpose behind section 82(1)(b) is to make the respondent aware of the facts so that he can file effective written statement and come up with defence to defeat the claim of the petitioner and the vagueness as alleged is required to be adjusted in that line, whether there was any breach to the respondent in taking his defence in the case or not. As a whole I do not find that the election petition is not maintainable in its present form, hence this issue is decided in the negative and in favour of the petitioner.

19. Issue Nos. (I) & (II) :—These two issues are taken up together for discussion as they are inter-related. In the present election petition, the petitioner Sumati Oraon has alleged corrupt practice adopted by the respondent Lai'l Oraon in electioneering by distributing pamphlets, using symbols, delivering speeches and slogans with religious exploitation and according to the petitioner, those were done and displayed/published for the furtherance of the prospects of the election of the respondent and those slogans, symbols and speeches were used with an attempt to promote the feelings of enmity and hatred between the Hindus and Muslims for having vote bank for Hindus in favour of the respondent.

20. In the election petition and in the evidence adduced for and on behalf of the petitioner, it is alleged that there were posterings and boardings and wall writings with the following inscriptions :

- (i) Bhajpa Ka Puna Naam . Blag Jolha Pakistan.
- (ii) Saugandh Ram Ke Khata Hai—Jahi Ram Ne Janam Lia Hai, Mandir Wahi Banagain.
- (iii) Jab-Jab Hindu Jaga Hai, Jolha Desh Se Bhaga Hai.
- (iv) Ram Krishna Hare-Hare, Kamal Phool Ghare-Ghare.
- (v) Jo Hindu Hit Ka Karya Karega, Wahi Desh Per Raj Karega.

It is also stated that besides those inscriptions being used in hoarding posters and pamphlets, there were

also inflammatory speeches rousing Hindu sentiments by using the words "Shri Ram", meaning thereby the God Ram of Hindu, while inaugurating meetings for electioneering or concluding the speeches by the respondent or the national leaders of B.J.P. or the election agents and workers of the respondent.

21. Now in the present issue, we are to see whether those slogans, speeches, symbols alleged to be used by the respondent really meant for exploitation of Hindus for the election benefit of the respondent. Amongst the above mentioned inscriptions alleged to be used by the respondent in the posters and hoardings, except item nos. (i) and (iii), others do not directly hit the sentiments of other communities but it should be mentioned here that except oral statements made by some of the witnesses regarding the slogans used in item nos. (i) and (iii), there is no other evidence available on record. Even in the audio and video cassette which were played before the Court in presence of the learned counsel appearing for and on behalf of both the parties, it could not be found any such slogans as enumerated in item nos. (i) and (iii) mentioned above. As regards item nos. (ii) and (v), they rouse the Hinduism to some extent. They propagate alleged Hindu Rashtra, Mandir issue at Ayodhya has already stirred the whole country and even Apex Court was also involved once. These slogans and postings, if really used and propagated in their truest sense, then they would come within the mischief of corrupt practice. The Apex Court has specifically observed that pamphlets and others if not produced then mere saying would not establish corruption as per section 123(2)(3) of the Act as the same are required to be placed for proper scrutiny by the Court. Reference in this connection may be made to Kultar Singh Vs. Mukhtiar Singh (AIR 1965 Supreme Court 141). Regarding item nos. (ii), (iii) and (iv), I do not find those to be totally literally affecting communal harmony between the two communities called for unity amongst the Hindus for achieving their right or for more unity amongst them cannot virtually come within the mischief of corruption or exploitation as per the above Section of the Act. In this respect, reference may be made to Prit Pal Singh Vs. Ranjit Rai (AIR 1984 Delhi 198).

22. For the purpose of corrupt practice on the ground of religious appeal, we may quote section 123(3) and (3-A) of the Act :—

"123(3). The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of or appeal to religious symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purpose of this clause."

"123(3A). The promotion of, or attempt to promote feelings or enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate."

23. Under the light of the above sections, I could find that item nos. (i) and (iii) of the slogans are definitely attracting and meant for bringing hatred amongst the communities for benefit of the person using those slogans to have a vote bank amongst the Hindus alone, but others do not directly come within such mischief. Call of Hindus for their unity for their united works for the development of a community may to some extent create feeling of secularism and separation of Hindus from the other community, but those cannot be called for to be a call for religions as contemplated under the above quoted sections. Moreover, both the petitioner and the respondent do not profess Hindu religion. They are having faith in Sarna religion prevailing amongst the tribals. So "his religion" as per the section do not attract those slogans.

24. Using of the words "Shri Ram", in my view, cannot be considered to be a call for religion. It is true that in Hindi belt of India, Ram is considered to be amongst 33 crores of idols of God but the same is not considered so in other parts of India. Moreover, the word 'Ram' is used as a symbol of peace and its use in literature as Ram Rajya, meaning thereby a land of peace and harmony, which may not symbolise of helping the sense of hatred amongst the communities. If that word is not used in any context the same cannot be considered as a call for religion. It has been strenuously argued by Mr. Verma, appearing for and on behalf of the petitioner that slogans, pamphlets and hoardings alleged to be used by the respondent, should be considered with the volatile situation prevailing in the country at the relevant time, meaning thereby that Ayodhya issue was then very much in the picture and the whole country was in turmoil and in this sensational issue, such using of the word 'Shri Ram' may be considered as symbolising Ram Temple at Ayodhya and thus the Hindu sentiments are tried/attempted rousing by this utterings.

25. The evidence adduced for and on behalf of the petitioner do not give any proper circumstances or situation where those posters and hoardings were issued or used, to have furtherance of the prospects of the election of the respondent, there were only omniaibus allegation of using such symbols pamphlets, speeches and slogans by the respondent. Without the context of circumstances or using of the slogan or pamphlets do not by themselves create corrupt practices.

ties if the same is not in the context of other circumstances such as rousing Hindu sentiments or harred amongst the Hindus or Muslims, but the slogans in item nos. (i) and (iii) are definitely prejudicial and directly go to the root of rousing of Hindu sentiments or harred amongst the muslim community. But the same should be considered in the subsequent issues whether these were really issued or used by the respondent or his worker or agent by his direct connivance or not. One pamphlet and/or poster has been exhibited in the case being Ext. 1 where there is inscription of picture of God Ram and there is slogan to the effect that : Jo Hindu Hit Kee Bat Karega, Wahi Desh Per Raj Karega. But from that poster itself, it is found that the same has been published not by the B.J.P. whose official candidate was the respondent but the same was published by the V.H.P. Mr. Verma, learned counsel for the petitioner had tried his best to have a link between the V.H.P. and B.J.P. in fighting the election at Lohardaga constituency by referring, the lectures of Sri Ashok Singhal, national leader of V.H.P. and organising various meetings by V.H.P. He has also referred to paper cuttings to show that there was poll alliance between B.J.P. and V.H.P. at the national level, but directly if could not be linked with to the effect that respondent was responsible for publishing the said V.H.P. hoarding or poster. Unless the direct link could be established between the respondent and hoarding published by the V.H.P., it cannot be said that the same was done for the furtherance of the prospect of the election of the respondent. How far the respondent is responsible, it could be dealt with in the subsequent issues. From the discussions made above, the above two issues are partly decided in the affirmative and partly in the negative.

26. Issue No. (III).—This issue relates to publication of appeals on the basis of religion or religious symbols for the furtherance of the election of the respondent who happens to be the official candidate of B.J.P. The newspaper publications which have been exhibited in the case relate not only to the publication of appeals for the B.J.P. but also the news items relate to the poll alignment of B.J.P. with various other organisations such as V.H.P., Bajrang Dal etc., at the national level. Stress has been given on the appeals made by Sri Gulsan Ajmani, a local M.L.A. published in the newspaper 'Aaj' appealing to the voters for voting in favour of the B.J.P. and that appeal has got semblance of sectarian appeals for the Hindu voters.

27. Mr. Verma, learned counsel for the petitioner referring to the various exhibits about the poll alignment of B.J.P. with V.H.P. and Bajrang Dal strenuously argued that where there was some sort of poll alignment with such organisations having sectarian view, then the respondent cannot shirk the responsibility by stating only that he did not indulge himself in mobilising V.H.P. or Bajrang Dal workers for the purpose of vote bank amongst the Hindu voters when V.H.P. and Bajrang Dal are definitely having communal propagandas for their existence and survival amongst the Hindu communities. It is true that the respondent is an official candidate of B.J.P. and that as per his own evidence that the electioneering

was conducted through directions from the national level, but for the purpose of corrupt practice, it must be having a direct nexus between the respondent and the publication of such news items or the connivance of the respondent in appealing in the name of the race, caste and of religion. Only because B.J.P. had poll alliance in the national level with V.H.P. and Bajrang Dal, for the purpose of constituting the role for the construction of Mandir at Ayodhya, or for some other reasons, for canvassing the election of B.J.P. candidate at Lohardaga constituency, there cannot be any scope of holding the respondent responsible for indulging corrupt practices directly in the constituency for winning the election in his favour. There is no scope or preponderance of probability in the trial of election on the charge of corrupt practice. The charge must be proved beyond all reasonable doubt and to the hilt. It is true that the proof may not be to the extreme extent as required in a criminal trial but the proof must be of such nature which causes the respondent solely responsible or his agent or workers for practising corruption in the name of religion in the constituency during the course of electioneering.

28. Newspaper cuttings or reportings may be relevant for the presumption under section 81 of the Evidence Act but such presumption alone without having direct proof of nexus between the respondent with the alleged practice of corruption cannot call for attracting section 123(3) and (3-A) of the Act. It is further stated that newspaper cuttings are exhibited only to show the volatile situation prevailing in the country by various speeches made by B.J.P. leaders for the cause of Hindus and in that context when the election was fought at Lohardaga with the symbols and posters supplied by B.J.P. from its national level, then the respondent cannot be excused only by saying that his participation or connivance could not be established from the side of the petitioner. It is further stated that national leader of V.H.P. Sri Ashok Singhal convened meetings with the constituency having specific calls in the name of religion and also made appeals to the voters for voting in favour of the respondent. It was stated by the petitioner in her evidence that he meeting was organised by the B.J.P. and her witnesses had also stated that it was organised by the B.J.P. and it is the specific case that Akhauri Nirajan Singh Advocae had organised the meeting of Ashok Singhal but this Nirajan Singh has been examined as D.W. 18 and he specifically stated that he is a member of the Congress Party including all his family members but he himself supports the cause of V.H.P. and he had organised the meeting of Ashok Singhal. There is a statement to the effect that the respondent had attended the meeting for some time but that alone does not establish the fact that the respondent was responsible for organising the meeting of Sri Ashok Singhal. There is no total revelation as to the contents of the speeches of Sri Singhal and as such this Court has got no scope to scrutinise those contents to find out whether those speeches constitute corrupt practice or not. Even if for arguments sake, it is held that Sri Singhal made inflammatory speeches for the cause of Hinduism, then also such meeting or such speeches by Sri Singhal cannot be shouldered by the respondent for

the purpose of his electioneering as mentioned above. Again it is very difficult for the Court to rely on the news item published on the information given by the Correspondents because they may not represent the true state of affairs. A news item without any further proof as to what had actually happened or been reported through witness is of no value. In this connection reference may be made to the case of Mammoohan Kalia Vs. Shri Yash and others. (AIR 1984 Supreme Court 1161).

29. In the present case, news items exhibited in the case have been proved by P.W. 15, (Ganpat Chaurasia) who happened to be a reporter of daily newspaper "Ranchi Express" and P.W. 16 (Pavan Kumar Bharti), the editor of the Ranchi Express and P.W. 17 who happens to be the editor of the daily newspaper 'Aaj', but the totality of the evidence reveals that the news items published have been sent by the Correspondents or by Nij Sambhadata and the veracity of the same cannot be established without the correspondents being examined in the case for each and every news items. Even Ganpat Lal Chourasia who happens to be a reporter has stated that veracity of the news items proved by him cannot be stated to be the actual news which he had sent for publication unless the transcript sent by him is made available to him for verification. In the light of such evidence, there is definitely no scope for this Court for taking reliance on those news items or proving of corrupt practice against the respondent.

30. About the publication of the news items and its wide circulation in the constituency of Lohardaga, there is no evidence that the respondent had any hand in the same. Those news items were definitely widely circulated in the constituency and those news items might have some effect in the mind of voters considering the situation prevailing at the relevant time on Ayodhya issue, but when those news items could not be proved to be correct news items beyond all reasonable doubt, there is no scope for this Court to act on those for drawing adverse inference against the respondent and hence the said issue is decided accordingly.

31. Issue Nos. (iv), (v) and (vi) :—All these issues are taken up together being vital issues for arriving at a decision in the election petition itself and these issues being inter-related to each other. Before going into the discussion and the decision of these issues, let me first of all discuss the oral and documentary evidence adduced by the parties in the case.

32. It has already been stated that for and on behalf of the petitioner in total 19 witnesses have been examined in the case and out of them, P.W. 1 is the petitioner herself. Besides P.Ws. 5 to 19 and P.W. 2, the other witnesses are the workers of the Congress Party. For appreciating the evidence of these witnesses, it should be mentioned here that the Congress workers who deposed in favour of the petitioner, their evidence cannot be accepted without a grain of salt as they may be termed as partisan witnesses but only because they are interested witnesses, their evidence cannot be thrown out in toto, but the law requires that their evidence should be scrutinised closely. P.W. 2 Manoj Kumar Verma deposed to the effect that a meeting was organised

on 17-5-1991 at Bohardaga where Shri Ashok Singh delivered lectures. He stated in his cross-examination that he was a voter for Congress Party and he was not impressed what the speakers in that meeting had spoken. P.W. 3 Pawan Kumar deposed in respect of the meeting of Sri Atal Bihari Vajpayee. This meeting was held before the notification of election at Lohardaga constituency was published admittedly and, as such, his meeting or the speeches of Sri Vajpayee cannot be taken into account for the purpose of allegation of corrupt practice in the name of religion against the respondent. P.W. 4 Prayag Prasad stated regarding the election campaign of the respondent. He stated that he heard the respondent delivering lecture and asking the people to the effect that if he is voted to power then temple at Ayodhya would be constructed and Hindu Rashtra would be established but such allegations are not there in the petition itself regarding specific mentioning of respondent about speaking so. P.W. 5 Mahipal Bhagat stated that he saw the respondent and his election agent Om Singh moving in a Jeep. He saw a out-out of Advani Jee and Atal Jee displaying. He had also deposed in the same line as that of P.W. 4. P.W. 6 Badh Ram Oraon. One has stated that Shri Lalit Oraon had given publicity stating that if B.J.P. was voted to power then the temple would be constructed at Ayodhya. He has further stated that such statement has definitely affected the election prospect as Hindu voters were sizeable in the constituency itself. P.W. 7 made omnibus allegation that he saw posters and symbols used by the B.J.P. in the constituency during the electioneering. He also stated that Mr. Lalit Oraon made statement before the public while delivering poll lectures to the effect that if he is voted to power, the temple would be construed at Ayodhya. I have already mentioned that such sort of allegations are not there directly against the respondent in the election petition itself. So when such material particulars are lacking in the election petition then such evidence has got no value for establishing corrupt practice against the respondent. P.W. 9 Pradeep Kumar Vishwakarma has mentioned about the meeting of Ashok Singh. P.W. 10 Brisga Oraon made omnibus allegation of election campaigning using the name of religion against the respondent. He further stated that the petitioner also started her election lecture by saving Jai Dharm and, according to him, the word 'Dharm' means religion of tribals of which the petitioner and the respondent belonged. P.W. 11 Umar Ali is a photographer and he has proved Ext. X series of photographs with negatives about the posterings made. P.W. 12 is Miss. Pushplata Dubey, a Constituency. He has specifically stated that he does not know as to whose behest those posterings were made. P.W. 12 is Miss. Pushplata Dubey, a Congress Worker. She has deposed as to how she viewed the video cassette being displayed by the B.J.P. and how she managed to get the video cassette from her younger brother who happened to be a B.J.P. worker and hand it over to the petitioner. The name of the persons who had organised the video show were mentioned to be the B.J.P. wor-

kers but the defence witnesses have proved that those persons named by her were actually V.H.P. workers and not B.J.P. workers. She has also mentioned about the inflammatory speeches of Susri Sadhvi Ritambhara in the audio cassette which was said to be used by the workers of respondent during the election campaign. P.W.13 (Tribhuan Bhagat) has made only the omnibus allegation regarding now the B.J.P. workers had used slogans during the election campaign. P.W. 14 Karma Oraon has introduced a new story to the effect that the respondent made statement to the people that he would construct the temple of 'Bajrang Bali' in his village if he was voted to power. This was never the case of the election petitioner. About the evidence of P.Ws. 15 to 17. I have already mentioned while discussing the previous issue. P.W. 18 Ram Niwas Prasad has proved some of the photographs, displaying slogans of B.J.P. as mentioned in the election petition. According to him, he had taken those photographs. According to the defence witnesses, this witness has been set up by the petitioner as a photographer when this witness has no photography business as he was having a licence of Sugar which was cancelled some days back. He has also specifically stated that Niru Babu alias Akhauri Niranjan Prasad Advocate is not a B.J.P. worker, rather he is the office bearer of V.H.P. He has also stated that the other persons named by the witnesses of the petitioner namely Sarju Narayan Prasad, Sakaldeo Singh, Dwarika Prasad Sah are not the B.J.P. workers rather they are the workers of V.H.P. Thus his evidence has belied the facts brought to be established by the other witnesses of the petitioner to the effect that the B.J.P. workers had displayed video cassette and audio cassette and used slogans in the name of Hindu religion etc.,. P.W. 19 Ayodhaya Prasad has deposed in general way regarding using of posters, banners by the respondent in his Car and inflammatory lectures and slogans in the name of religion. His evidence is of omnibus character.

33. For and on behalf of the respondents, in total 22 witnesses have been examined including the respondent himself as D.W. 22. The defence witnesses have only deposed to rebut the allegations brought by the petitioner and her witnesses and practically they have got nothing more to do also when there is no counter allegation brought by the respondent in this election petition.

34. D.W. 1 Md. Halim had denied of he slogans as alleged by the petitioner to be propagated by the workers of the respondent in the constituency during the course of election campaign. He has also denied about the playing of audio cassette of Susri Sadhvi Ritambhara's lectures and displaying of video cassette recording regarding Ayodhaya issue D.W. 2 Dinesh Oraon is a Demonstrator of a College. He is also a supporter of B.J.P. and worked for B.J.P. He has also denied

the allegation brought by the petitioner. According to him, the only hoardings and posters used by the B.J.P. were having inscriptions : Ram, Roti and Insaff and the vehicles used during the electioneering having cut-outs of the national leaders of B.J.P. and nothing else. He has also denied the allegation of posterizing and the photographs mentioned by the petitioner. He has further stated that by word 'Ram' means Ramrajya i.e. land of peace. It was never touching any communal feelings or hatred between the two races. D.W.3 Md. Rafi is a muslim by caste and he is all along being a body-guard of the respondent. He remained with the respondent all along during the electioneering and also at the time of delivering election lecture by the respondent. He has denied all the allegations brought by the petitioner against the respondent in using words of communal feeling etc. He is found to be a reliable witness and he comes from different community and he is without having any affiliation to either of the parties and is an official of the police department attached to the respondent. D.W. 4 Ram Swarath Sahu also denied the allegation brought by the petitioner. He is a simple voter having no affiliation to either of the parties. D.W. 5 is Gandu Tana Bhagat. He was a member of the Congress Party till 1990 but he left the party in the year 1991. He has also denied the slogans of communal disharmony as alleged against the respondent. Lengthy cross-examination could not dislodge this witness. D.W. 6 Rabi Acharya is a worker of B.J.P. and denied all the allegations of the petitioner and, according to him, they made wall writings with the simple caption of 'Vote for B.J.P.' D.W. 7 Pashupati Nath Jaiswal is a worker of B.J.P. and according to him, Cars used in the electioneering of respondent had only pictures of Atal Bihar Vajpayee and Lal Krishna Advani with the symbol of Kamal Phool and nothing else. P.W. 8 Shyam Sunder Sahu has also deposed in the negative line supporting the respondent. He is also a supporter of B.J.P. as is revealed from his evidence. According to him, the petitioner lost the election as she did not do any developmental work in the constituency during her regime. D.W. 9 Mohan Oraon has deposed to the effect that Ram Niwas Prasad who deposed in favour of the petitioner exhibiting some photographs was never doing any photography business rather was having a whole-sale dealer of Sugar and his licence was also cancelled some days back. According to this witness, this Ram Niwas has been set up by the petitioner and those photographs were only manufactured one after the election from the side of the petitioner for the purpose of showing materials for this election petition. D.W. 10 Nagendra Jaiswal have stated that none of the workers/members of the V.H.P., Bajrang Dal or R.S.S. had ever worked for and on behalf of the respondent during the election campaign of B.J.P. candidate in the Lohardaga constituency. He has also denied the allega-

tion brought by the petitioner, D.W. 11 Kailash Oraon has also deposed in the same line as that of the other witnesses. D.W. 12 Suvodh Kumar Lal has also stated that this Ram Nivas prasad was i got up witness of the petitioner. He has also denied the other allegations about the electioneering of the respondent in the name of the religion. D.W. 13 Md. Ahmad Khan stated that election manifesto of B.J.P. was to eradicate poverty and make scope for employment to all. According to him, slogans of construction of Ram Temple were made by V.H.P. and Bajrang Dal but B.J.P. candidate, namely, the respondent had no connection with such slogans. D.W. 14 Bhikhari Sahu has deposed that name of the persons used by the witnesses of the petitioner marking them as B.J.P. workers were totally false, rather those were staunch supporters of Bajrang Dal while Santosh was a Congress worker. He also campaigned for and on behalf of the B.J.P. D.W. 15 Md. Mustkum Ansari has denied the allegation of communal disharmony between the Hindu and Muslim brought by the respondent for the purpose of his vote bank amongst the Hindu alone. D.W. 16 Om Prakash Goel is a District General Secretary of B.J.P. of Gumla District. He has denied the slogans alleged to be used by the respondents during the election D.W. 17 Aditya Kumar is the Vice President of the district Youth Forum of the constituency deposed that Vishwa Hindu Parishad was organising the meeting of Sri Ashok Singh and not the respondent or the B.J.P. D.W. 18 Akhauri Niranjan Kumar is an Advocate by profession and according to him, he is a member of Congress party and supporter of V.H.P. and he himself organised the meeting of Sri Singh and he has denied any connection of Lalit Oraon with those meetings. D.W. 19 Sadhu Bhagat is a supporter of Jharkhand Mukti Morcha (for short 'J.M.M.') and party worker. He denied of making any slogan in the name of religion by B.J.P. as alleged by the petitioner. His evidence inspite of confidence as his not the supporter of B.J.P. nor Congress-I but he had worked for J.M.M. whose official candidate has also fought in the same fray. D.W. 20 Madan Mohan Pathak had also denied the allegation brought by the petitioner, D.W. 21 Chandrika Oraon was holding the executive post of B.J.P. at the relevant time and he had denied all the allegations brought by the petitioner. D.W. 22 is the respondent himself.

35. As per the petitioner, the respondent created vote bank amongst the Hindu voters with rousing speeches made in the name of Shri Ram and Ayodhya Temple. Further contention of the petitioner is that the respondent being the official candidate of B.J.P. and when poll alliance was made in the national level on Hindu plank with V.H.P. and Bajrang Dal, it trampled the cause of Hindutava. The entire allegation is that Newspaper advertisement caused rousing of Hindu sentiments amongst Hindu voters which on the other hand

caused hatred amongst two religions. The further allegation is that by the meeting of Atal Behari Vajyayee and Ashok Singh, such rousing sentiments were created amongst Hindu voters which represent sizeable community and voters in the constituency itself. I have already mentioned that in support of such allegation, the petitioner mainly passed her claim by oral evidence deposited mainly by the Congress workers which have again been denied vehemently from the side of the defence even by adducing evidence of independent witnesses and the witnesses who were supporter of different other parties. Oral evidence of such slogans, pamphlets and posters or wall writings have got no much force when the stone have been denied from the side of the defence and such oral evidence is required to be scrutinised much when the document in respect of that are not there. It is true that some photographs of wall writings have been exhibited in the case although those exhibits have been questioned for the side of the defence. Even if those are taken to be correct then also the evidence is lacking as to who were responsible for making such wall writings. There is little scope to propagate all probability as submitted by Mr. Verma to the effect that those wall writings can be considered as done by the B.J.P. or the respondent or the worker and thus support the case of the respondent for winning election, but such sort of presumption cannot prove the corrupt practice as contemplated under section 123 of the Act. It is now a settled principle that corrupt practice alleged against the candidate or his worker or agent must be proved by cogent and reliable evidence and to the hilt. Moreover even if it is taken to be granted that those slogans were used during the electioneering of the respondent, then the first step may be said to be proved by the petitioner but the second step which is a vital one as to who published and as to who printed it and lastly as to who propagated it have not been proved beyond all reasonable doubt from the side of the petitioner rather the last two steps are lacking in evidence led by the petitioner.

36. Regarding audio cassette of inflammatory lecture of Susri Sadhvi Ritambhara, this has been played before the Court in presence of both the parties and it is found that those speeches were really inflammable and the statements made in the lecture are offending statements under section 123 of the Act, but there is no evidence as to who made that audio cassette and also there is no evidence that the respondent had any hand in recording of audio cassette or getting the same played within the constituency.

37. Mr. Barnwal S. Lal, on behalf of the respondent has strenuously argued that audio cassette of Susri Ritambhara is marketable commodity and

as such any one can use the same or get the same played by purchasing from the market and when the same was not banned, no evidence can be attributed of corrupt practice for playing the same against the respondent or his workers. Regarding displaying of Video cassette, there is no cogent evidence available except that of Miss. Pusplata Dubey whose evidence on proper scrutiny do not inspite much confidence when she happens to be the staunch supporter of Congress I Party. Moreover, on displaying of same Video cassette. I do not find much involvement in it. What had happened in Ayodhya during 1990 is a historic fact by now and those facts have only been shown in the cassette. In the last part of the video cassette, there were election manifestos and also there were slogans such as Ram, Roti, Samajik Nayaya and that Ram Bharat Hai, Ram Bharat Hai. I have already stated that this has come in evidence that Ram symbolises a peaceful land or a land of peace. I do not find any inciting slogans that were used in the video cassette. Some lectures were there by some B.J.P. leaders in the video cassette when those lectures show how B.J.P. wanted for social upliftment. I do not find in these exhibited video and audio cassette have any way supported the case of the petitioner for bringing the alleged corrupt practice against the respondent.

38. Mr. Verma, as stated earlier, has urged that when from the evidence it could be found that B.J.P. office bearer had attended the meeting of V.H.P. then the same makes an inference of campaigning of V.H.P. for the cause of respondent on the religious line and irresistible inference can be further made to the effect that the respondent must have been consulted for holding the meeting of V.H.P. in his favour and propagated religious sentiment, but there is no proper or full context of the lecture of Shri Ashok Singhal or lecturers of those meetings. Only because Ashok Singhal was the leader of V.H.P., it cannot be said that he made slogans and gave lectures rousing Hindu

sentiments. The slogans/lecture must directly envisage Hindu sentiment. Unless full context is there, there is little scope of scrutiny by this Court. Moreover, some indirect support by Bajrang Dal or V.H.P. to the respondent in his election campaign cannot make the respondent liable directly. It may be that B.J.P. got benefitted out of those slogans, wall writings, video/audio cassette etc. and that the respondent had tacit consent on those actions but tacit action cannot be considered as indulgence in corrupt practice as envisaged under sub-section (3) and (3A) of Section 123 of the Act. About the meeting of Atal Behari Vajpayee, there is no bearing in the present case as admittedly that meeting was convened before the election notification at Lohardaga constituency. Thus from the observations made above, the issues are decided in the negative and in favour of the respondent and against the petitioner.

39. In the result, on the basis of decision in the foregoing issues, the election petition is dismissed with cost of Rs. 2,000 against the petitioner. If the cost is not deposited within one month next, the amount already deposited in this Court should be disbursed in favour of the respondent.

40. Let a copy of this judgment be sent to the Chief Election Commissioner, New Delhi and the Speaker of Lok Sabha, New Delhi, for information.

Sd/- Prasun Kumar Deb
Patna High Court,
Ranchi Bench.
The 7th July, 1995.
AKS|NAFR|Cp. 5.

[No. 82|BR|(3|91)|96(R)]
By Order,
C. R. BRAHMAM, Secy.

